

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

COUNTRY FRESH, LLC

Employer

and

Case GR-7-UC-579

**GENERAL TEAMSTERS UNION, LOCAL
406, AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO¹**

Petitioner

APPEARANCES:

Henry W. Sledz, Jr., of Chicago, Illinois, for the Employer.

Fillipe Iorio, Attorney, of Grand Rapids, Michigan, for the Petitioner.

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Petitioner appears as amended at hearing.

² Both parties filed briefs, which were carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

Overview

The Employer produces, processes, and delivers milk and related products to grocery stores, convenience stores, other retail outlets, and institutions. The Employer's main production facility is in Grand Rapids, Michigan. The Petitioner represents approximately 75 drivers, maintenance employees, and wash/fuel/tire employees at that facility. The current contract between the Employer and the Petitioner is effective from July 3, 2001, through July 2, 2006. The Petitioner seeks to accrete to the unit it represents drivers employed out of the Employer's Traverse City, Cadillac, and Kalamazoo, Michigan facilities.

In November 1986, the Employer acquired its Traverse City facility, which employs approximately seven unrepresented drivers. In June 2003, the Employer's parent company, Dean Foods, purchased Melody Farms, also a producer of milk and dairy products. Thereafter, in February 2004, the Melody Farms product line was transferred to the Employer, resulting in the acquisition of facilities in Grand Rapids, with seven or eight unrepresented drivers; Comstock Park, Michigan, with five unrepresented drivers; Cadillac, Michigan, with approximately seven unrepresented drivers; and Kalamazoo, Michigan, with one unrepresented driver. Shortly after the acquisition of these facilities, the Grand Rapids and Comstock Park drivers were voluntarily accreted into the existing unit.

The Employer argues that the requested clarification should be denied and the petition dismissed because (1) the petition is untimely under *Wallace-Murray Corp.*, 192 NLRB 1090 (1971) and its progeny as it was filed in the middle of a contract term, (2) the Traverse City location has been historically excluded from the unit, and (3) the Cadillac and Kalamazoo locations have insufficient community of interest with the unit. Petitioner counters that (1) *Wallace-Murray* is inapplicable in this context where it is not seeking to add a classification deliberately omitted from the unit, (2) the Traverse City location has not been expressly excluded from the unit historically, and the duties there have recently undergone substantial changes, so that even if it was historically excluded, this should not preclude its accretion, and (3) the Traverse City, Cadillac and Kalamazoo locations have a strong community of interest with the Grand Rapids location.

I find that accretion of the Traverse City location into the existing unit would be inappropriate as it would upset the parties' historical practice of excluding that location from the unit. I also find that accretion of the Cadillac

location is inappropriate as it has a separate identity and could comprise a separate unit. However, I find accretion of the Kalamazoo location to be appropriate based on its overwhelming community of interest with the bargaining unit employees and its lack of a separate identity.

Operations and Supervision

The Employer's main facility is in Grand Rapids, where most of its dairy products are produced. The Traverse City location is comprised of a parking lot, and a non-operational freezer. The Cadillac facility consists of a leased parking lot and a barn or building. The Kalamazoo facility is a rented parking lot. Traverse City, Cadillac, and Kalamazoo are approximately 140, 100, and 50 miles, respectively, from Grand Rapids. The Employer also has a facility in Battle Creek, Michigan, which has five or six drivers represented by Local 7, Teamsters. The production employees at the Grand Rapids facility are represented by Retail, Wholesale, Department Store Union.

The Employer's general manager is Nicholas Kelble. David Chamberlin is the distribution manager for all locations and oversees the entire distribution operation. Under Chamberlin are Marty Sanders, distribution supervisor for Grand Rapids and Traverse City, Wayne Thibdaue, supervisor for Grand Rapids, Kalamazoo, and Battle Creek, and Keith Ebels, branch manager for Cadillac. Chamberlin, Sanders, and Thibdaue all have their offices in Grand Rapids. Ebels' office is at the Cadillac facility. The Traverse City and Kalamazoo locations have no buildings or on-site supervision. Human resource manager Renee Buggs and Chamberlin handle hiring and firing for all locations. Sanders, Thibdaue, and Ebels have the authority to discipline employees. If Ebels is unavailable to deal with a disciplinary matter for the Cadillac facility, Sanders handles it.

Driver Duties

The same job description applies to drivers at all locations. All drivers are able to do "pedal runs" and direct store deliveries. Pedal runs involve smaller accounts. A driver looks at the store's or institution's inventory, creates an order, pulls the needed product from his bulk product inside the truck, and delivers it to the customer. A direct store delivery involves bigger stores, such as supermarkets, that order product which the driver brings to the store's dock for unloading. The delivery areas for some drivers from the Grand Rapids facility encompass a large geographic area. Thus, some bargaining unit drivers make deliveries in the same proximate areas as the Traverse City, Cadillac, and Kalamazoo drivers.

Beginning in about January or February 2001, prior to the current contract, the Traverse City drivers began receiving product from Grand Rapids; before that

they received their product from Flint. Since 2003, one of the Traverse City drivers drives to Grand Rapids to pick up product for the Traverse City drivers. Previously, a bargaining unit driver had delivered the product to Traverse City. When the Traverse City driver arrives at the Grand Rapids location, a bargaining unit employee tells him where to drop off his empty trailer and pick up his loaded trailer. A bargaining unit employee may substitute for the Traverse City driver in the case of vacation, injury, or sickness. A couple days a week, a bargaining unit employee transports overflow product to the Traverse City drivers, and three or four times a week, a bargaining unit employee transports ice cream to the Traverse City drivers for delivery. In the past year, during the current contract, the Traverse City drivers, who in the past delivered primarily to smaller accounts, such as gas stations and convenience stores, have been assigned additional accounts at supermarkets that had previously been serviced by bargaining unit employees. Approximately 14 new stops have been added to their total of about 218 stops.

A bargaining unit employee also delivers product four days a week to the one Kalamazoo driver. The two work together to load the product onto the Kalamazoo employee's trailer, taking 90 to 105 minutes to do so. Both use the same equipment to move the product. The bargaining unit driver brings the Kalamazoo driver his paycheck and mail, and takes his paperwork back to Grand Rapids.

One of the seven Cadillac drivers comes to Grand Rapids to pick up product for the Cadillac employees. When he arrives at the Grand Rapids location, a bargaining unit employee tells him where to drop off his empty trailer and pick up his loaded trailer. Two bargaining unit drivers who have routes in the Cadillac area layover in the Cadillac yard a few days a week.

The bargaining unit drivers drive single or tandem tractors with 28 or 45 foot refrigerated trailers, or straight trucks with no trailer. The Traverse City drivers drive either single or tandem tractors with 28 or 45 foot refrigerated trailers. The Cadillac drivers drive single or tandem tractors with a 28 foot refrigerated trailer, or straight trucks with no trailer. The Kalamazoo driver drives a single tractor with a 28 foot refrigerated trailer. Drivers at all locations use Norad hand-held computers to generate invoices to individual customers and to place orders. These computers are connected to the mainframe computer at the Grand Rapids facility.

Labor Relations

Labor relations is centralized from the main facility in Grand Rapids. All payroll and personnel records are maintained at Grand Rapids. Paychecks for all employees are generated there. Separate seniority lists are maintained for each

location. The bargaining unit employees' base wage is \$16.91 an hour. All Traverse City drivers earn \$16.00 an hour, with the exception of one driver who earns \$16.75 an hour. Cadillac drivers earn between \$13.35 and \$17.35 an hour. The Kalamazoo driver earns \$17.35 an hour. The Traverse City employees have different health and 401(k) benefits than the bargaining unit employees. The Cadillac and Kalamazoo employees have similar health and 401(k) benefits to each other, but different than both the bargaining unit employees and Traverse City employees. During negotiations for the current contract, there were no discussions regarding the Traverse City employees becoming part of the bargaining unit.

Analysis

Timing of the petition and the Traverse City employees' historical exclusion

The Employer argues that the petition is untimely under *Wallace-Murray*, 192 NLRB 1090 (1971) because it was filed in the middle of a contract term, and that the Traverse City drivers should not be accreted into the unit as they historically have been excluded. Petitioner maintains that *Wallace-Murray* is inapplicable in this context because it is not seeking to add a classification deliberately omitted from the unit. Petitioner also contends that the Traverse City drivers were not expressly excluded from the unit historically, and their duties have recently undergone substantial changes, so that even if they were historically excluded, this should not preclude their accretion.

The Board generally will not clarify a unit defined by contract during the contract's midterm to include an excluded position in existence before the contract was signed. *Austin Cablevision*, 279 NLRB 535, 536 (1986). Further, the Board has long held that a unit clarification petition filed during the term of a contract will be dismissed if the party filing the petition did not reserve its right during the course of bargaining to file for clarification. *Id.*; *Edison Sault Electric Co.*, 313 NLRB 753 (1994). Here, the Traverse City drivers have worked for the Employer since 1986, and Petitioner has not sought their inclusion in the unit during negotiations for the several contracts entered into since 1986. While Petitioner contends that *Wallace-Murray* does not apply because the Traverse City employees were not "deliberately omitted" from the unit, the Board has held that historical exclusion in practice precludes unit clarification. *Plough, Inc.*, 203 NLRB 818, 818-819 (1973) (clarification inappropriate where employees were not expressly, but were historically, excluded from the unit over several contracts); *Robert Wood Johnson University Hospital*, 328 NLRB 912 (1999). Indeed, it is well settled that a unit clarification proceeding is not appropriate for upsetting an established practice concerning unit placement of employees or classifications. *Batesville Casket Co.*, 283 NLRB 795, 796 (1987).

Petitioner argues that the Traverse City drivers' duties and working conditions have changed so substantially since the execution of the current contract that accretion should not be precluded. The only changes that have occurred, however, are that the Traverse City drivers now deliver to some larger accounts, such as supermarkets, and some bargaining unit routes were reassigned to Traverse City drivers. This does not amount to substantial changes in supervision, placement, or duties. *Bethlehem Steel Corp.*, 329 NLRB 243.244 (1999). Thus, the appropriate action for determining the Traverse City drivers' placement in or out of the unit, would be an election pursuant to Section 9(c) of the Act. *Plough Inc.*, supra.

The Cadillac and Kalamazoo employees, however, were not part of the Employer's work force when the current contract was negotiated, and have not been historically excluded from the unit. Nonetheless, the Employer argues that allowing the Cadillac and Kalamazoo drivers to be accreted into the unit would amount to piecemeal accretion of employees who have a greater community of interest with the Traverse City drivers. I find this argument unpersuasive. In the cases the Employer relies on for its proposition, *United Parcel Service*, 325 NLRB 37 (1997) and *United Hospitals, Inc.*, 249 NLRB 562, 563 (1980), the unions sought to accrete small portions of historically excluded classifications into established nationwide and multiemployer units, respectively. In both cases, the Board found this to be inconsistent with the parties' practice of bargaining on the basis of a nationwide or multiemployer unit. The Cadillac and Kalamazoo drivers, in contrast, are employees at newly acquired facilities, and have not been historically excluded from the established unit. Further, it is the Employer's practice to deal with newly acquired facilities on a piecemeal basis, as evidenced by its voluntary accretion of the Grand Rapids and Comstock Park drivers. Thus, I conclude there are no procedural barriers to the accretion of the Cadillac and Kalamazoo drivers into the unit.

Merits of the Petition

UC petitions, although most frequently used to clarify unit placement issues, also have been used to clarify unit scope issues. *Armco Steel Co.*, 312 NLRB 257, 259 (1993). That is the issue we have here.

When the Board finds disputed employees to be an accretion, it will clarify the unit to so indicate. *International Harvester Co.*, 187 NLRB 739 (1971). However, the Board follows a restrictive policy in finding accretion because it forecloses employees' rights to select their representative. *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *Towne Ford Sales*, 270 NLRB 311 (1984), *enfd.* 759 F.2d. 1477 (9th Cir. 1985). Consequently, accretion will be

found "only when the additional employees have little or no separate group identity...and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted." *Super Value Stores*, 283 NLRB 134, 136 (1987), quoting *Safeway Stores*, 256 NLRB 918 (1981). Traditional criteria used in making community of interest determinations in scope of unit cases include centralized control over daily operations and labor relations, including the extent of local autonomy, similarity of employee skills, functions, and working conditions, degree of employee interchange, common supervision, geographic proximity, and bargaining history. *Passavant Retirement & Health Center*, supra; *Mercy Health Services*, 311 NLRB 367 (1993). In most cases, some factors militate toward and some against accretion, so that a balancing of factors is necessary. *E.I. Dupont de Nemours, Inc.*, 341 NLRB No. 82, slip op. at 2 (2004). The Board places great reliance on separate supervision and employee interchange in unit accretion issues. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001).

The Employer's daily operations and labor relations are centrally controlled. As to the Kalamazoo facility, hiring and firing are handled by the same supervisors as for bargaining unit employees. The Kalamazoo driver has no on-site supervision. His immediate supervisor is headquartered in Grand Rapids and also supervises bargaining unit employees. The bargaining unit employees and the Kalamazoo driver perform identical jobs with indistinguishable duties and functions, using identical skills and equipment. A bargaining unit employee works alongside the Kalamazoo employee 90 to 105 minutes a day, four days a week. He brings the Kalamazoo driver his paycheck and mail, and turns in the Kalamazoo driver's paperwork in Grand Rapids. Some bargaining unit drivers' routes overlap with the Kalamazoo driver's geographic territory. There is no bargaining history for the Kalamazoo facility. Thus, I find the Kalamazoo driver shares a strong community of interest with the bargaining unit employees. See *Waste Management Northwest*, 331 NLRB 309 (2000); *Mercy Health Services*, supra.

The Cadillac drivers also share a community of interest with the bargaining unit employees. Although they are supervised by an on-site branch manager, when he is not available, a supervisor in Grand Rapids handles supervisory matters. The Cadillac drivers and bargaining unit employees perform identical jobs with the same duties and functions, using identical skills and equipment. Cadillac drivers interact with bargaining unit employees when a Cadillac employee picks up product at Grand Rapids, and when two bargaining unit employees layover in Cadillac. The delivery routes of some of the Cadillac drivers overlap with the bargaining unit drivers' routes. There is no bargaining history. *Id.*

For an accretion to be appropriate, however, the additional employees at Cadillac and Kalamazoo must also have little or no separate group identity. *Super Value Stores*, supra. The Employer argues that the Traverse City, Cadillac, and Kalamazoo drivers collectively have a distinct identity which could constitute a separate bargaining unit. I disagree. There is no record evidence that employees from these three locations have any interchange with each other. They have no common day-to-day supervision. There is no geographic overlap among their delivery routes. Unlike the contract between bargaining unit drivers and the drivers at Traverse City, Cadillac and Kalamazoo, there is no evidence of any contract among the Traverse City, Cadillac, and Kalamazoo drivers. There is also no evidence of functional integration between the three locations. Likewise, these same facts preclude a finding that the Cadillac and Kalamazoo drivers constitute a distinct unit. Thus, I conclude that the Traverse City, Cadillac, and Kalamazoo drivers do not comprise a separate unit, nor do the Cadillac and Kalamazoo drivers constitute a distinct unit.

The Cadillac drivers alone, however, could constitute a separate appropriate unit. As noted, the Cadillac drivers have a community of interest with the bargaining unit drivers. However, Ebels is present on-site at the Cadillac facility and supervises only the Cadillac drivers. The only potential for interaction between the Cadillac drivers and the bargaining unit drivers is when the two bargaining unit employees layover in Cadillac and when the Cadillac driver goes to Grand Rapids to pick up product. There is no significant employee interchange. Notwithstanding the existence of similar skills, functions, and duties, as well as the integration of certain aspects of the Employer's operations and administration, the Cadillac location maintains some degree of autonomy in day-to-day operations. Therefore, although a community of interest exists between the Cadillac drivers and the bargaining unit employees, the appropriateness of the inclusion of the Cadillac drivers into that unit does not establish the inappropriateness of a smaller Cadillac facility unit. See *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984). Moreover, the Employer has an established practice of recognizing or dealing with employees as single location units, such as the Battle Creek bargaining unit and the unrepresented employees in Traverse City. Accordingly, because the Cadillac drivers could constitute a separate appropriate unit, I conclude that their accretion into the bargaining unit is inappropriate. *Passavant Retirement & Health Center*, supra at 1216; *Armco Steel Co.*, supra at 258.

The Kalamazoo facility, in contrast, does not have a separate identity outside the bargaining unit. Specifically, there is only one employee at Kalamazoo. One employee units are not appropriate. *Fred Finch Youth Center*, 243 NLRB 77 (1979). Further, the Kalamazoo driver is supervised from Grand Rapids and has considerable contact and community of interest with the

bargaining unit employees. See *R&D Trucking, Inc.*, 327 NLRB 531, 531-532 (1999). Thus, I conclude that the Kalamazoo facility should be included in the existing bargaining unit.

Conclusion

Accordingly, based upon the foregoing and the record as a whole, I conclude that the drivers employed out of the Traverse City and Cadillac facilities should be excluded from the unit represented by the Petitioner and the driver employed out of the Kalamazoo facility should be included in the unit.³

IT IS ORDERED that the Petitioner's requested clarification is partially denied and partially granted. The bargaining unit represented by the Petitioner at the Employer's Grand Rapids facility is clarified to exclude the drivers employed out of the Employer's Traverse City and Cadillac facilities and to include the driver(s) employed out of the Employer's Kalamazoo facility.⁴

Dated at Detroit, Michigan, this 2nd day of June 2004.

(SEAL) “/s/ [Stephen M. Glasser].”
/s/ Stephen M. Glasser
 Stephen M. Glasser, Regional Director
 National Labor Relations Board – Region 7
 Patrick V. McNamara Federal Building
 477 Michigan Avenue – Room 300
 Detroit, Michigan 48226

³ At hearing, the Petitioner indicated its willingness to accept an accretion that differed from the petitioned-for accretion.

⁴ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **June 16, 2004**.